

B. Adams WA 2917 He

12/22/1989

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011
(206) 623-7580

RICHARD D. FORD

RECEIVED
DEC 26 1989
WASTE MANAGEMENT BRANCH

TELEX 4740035 TELECOPY (206) 623-7022

1735 NEW YORK AVE., N.W. SUITE 500
WASHINGTON, D.C. 20006-4759
(202) 628-1700
TELEX 904059 WSH
TELECOPY (202) 331-1024

420 L STREET, SUITE 404
ANCHORAGE, ALASKA 99501-1937
(907) 276-1969
TELECOPY (907) 276-1365

SEAFIRST FINANCIAL CENTER
SUITE 1480
SPOKANE, WASHINGTON 99201-0636
(509) 624-2100
TELECOPY (509) 456-0146

3200 U. S. BANCORP TOWER
111 S. W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
(503) 228-3200
TELECOPY (503) 248-9085

December 22, 1989

Mr. William Adams
RCRA Compliance Section
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Attention: HW-112

Dear Mr. Adams:

This responds on behalf of the Port of Seattle to Mr. Chuck Shenk's letter of November 27, 1989, with attached draft agreed order applying to facilities at Pier 91.

The Port of Seattle is a passive owner of the tank and related facilities at Pier 91. To the best of our knowledge, facilities were constructed and have been operated by others throughout their years of existence. The site history requires further review and explanation to clarify each party's role. The Port acknowledges it is the current fee owner of the land and facilities and as such responds with comments on the draft agreed order.

The Port and Chempro are in the process of developing an agreement on their respective responsibilities under the draft order. At this time, we do not have such an agreement. We recognize this is the responsibility of Chempro and the Port, but hope that EPA will cooperate by giving respondents adequate time to work through an agreement. Further, we urge that the scope of work be agreed to before the agreed order is executed. Although we believe Chempro, as operator and principal applicant for a Part B permit, should assume principal responsibility for accomplishing the scope of work and coordinating with EPA in carrying out the intent of any final agreed Order, we are still negotiating with Chempro on these points and expect to reach agreement prior to execution of an order with EPA.

In addition to clarifying responsibilities between the Port and Chempro for carrying out the terms of the Order, we believe

FILE COPY

USEPA RCRA
3012383

Mr. William Adams
December 22, 1989
Page 2

there should be clarification of what role, if any, the State of Washington will play in accomplishing the intent of the Order.

Until the Port's negotiations with Chempro are completed, we are not in a position to provide a complete set of comments on the proposed order, since the scope of the Port's responsibilities has not yet been resolved. Nonetheless, we offer these preliminary comments, which refer to the page number and section set forth in the draft order.

OK. Page 5, paragraph 12. The Port needs to verify whether it was the owner of this facility prior to the Navy condemning the property in 1941 and certain other factual matters.

OK? Page 8, paragraph 17B. Revise to read, "Respondent owner Port of Seattle is a passive owner and has not been involved in the operation of the facility. Respondent Chempro is the operator of the facility that has operated and is operating subject to 3005(e) of RCRA, 42 USC Sec. 6925(e)."

Page 9, paragraph 19A(2). The parties need some assurance that, if the work covered by the Order is performed, they will be able to recover their costs from the responsible parties. We suggest inserting a new subsection (f) to read as follows:

can't do. → "(f) EPA assures that all expenditures made pursuant to this order are consistent with the National Contingency Plan and that nothing herein shall be done that shall deny respondents the right to seek recovery from others who have owned, operated or otherwise used the facility and thereby contributed to environmental damage or releases requiring remediation." be done

Page 10, paragraph 19B(1), should be revised as follows:

no. "B. (1) Based on the nature and extent of contamination from releases at or from the Facility (which contamination factors are known and/or learned and/or estimated from information currently available), and based upon the potential health and environmental impacts which can be predicted with reasonable scientific certainty from such information, Respondents may compose and formulate a set of interim measures which, if implemented, can mitigate the release at or from the facility of hazardous wastes and/or constituents, and/or which can effectively mitigate the impact on receptors affected by such releases. If EPA determines interim measures are required, they shall do so by consent decree or court

Mr. William Adams
December 22, 1989
Page 3

order, unless Respondent agrees to proceed pursuant to this procedure. If Respondents perform (or have performed or are performing) what amounts to interim measures, then to the extent those interim measures are done pursuant to a governmental or court directive, the directive therefor as well as the work products and deliverables resulting therefrom shall be incorporated (pursuant to this reference) into this order, and any work done by Respondents reflected therein shall be deemed tendered as satisfying (partially or totally) any requirement of this order which calls for, in effect, substantially the same work and/or equivalent work product."

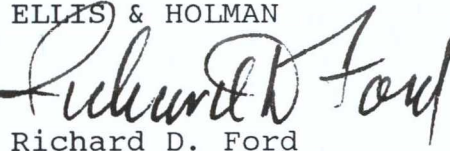
Port of Seattle does not agree that it should be required to undertake interim measures without the right to contest such requirements. We want to reserve all rights as to the need for and nature of any cleanup or remediation.

We would very much like to meet at your convenience, together with Chempro, to seek to work out a mutually agreeable order. We look forward to working with you.

Very truly yours,

PRESTON, THORGRIMSON,
ELLIS & HOLMAN

By


Richard D. Ford